IN THE

Supreme Court of the United States

October Term, 1972

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLE

No. 72-1164

DEBORAH A. NORTHCROSS, *et al.*,

Petitioners,

vs.

BOARD OF EDUCATION OF THE MEMPHIS CITY SCHOOLS, *et al.*

No. 72-1322

CAROLYN BRADLEY, *et al.*,

Petitioners,

vs.

THE SCHOOL BOARD OF THE CITY OF RICHMOND, *et al.*

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITIONS FOR WRITS OF CERTIORARI

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Petitioners in the above-captioned cases file this joint supplemental brief pursuant to Rule 24(5) in support of their petitions for writs of certiorari presently pending before this Court. The brief deals with the applicability to these cases of this Court's decision of May 21, 1973, in *Hall* v. *Cole*, 41 U.S.L.W. 4658.

In *Hall* v. *Cole* this Court approved the award of legal fees to a union member who successfully sued for reinstatement in his union after he was expelled for criticizing union

officers. The Court held that the case was "clearly governed" by the rule stated in *Mills* v. *Electric Auto-Lite Co.*, 396 U.S. 375 (1970), sanctioning the award of such fees to a plaintiff who had benefitted the members of a larger class. The benefits involved in *Hall* were non-pecuniary in nature; the plaintiff there had dispelled the chill cast upon the right of free speech of other union members, and the preservation of union democracy promised to affect the future conduct of union affairs. By awarding legal fees out of the union treasury the cost of the litigant's efforts were transferred to all the benefitted union members.

School desegregation cases such as these have an impact far beyond the named parties. The instant plaintiffs sued to protect all black school children in their respective school districts from segregation on the basis of race which would generate "a feeling of inferiority as to their status in the community that may affect their minds and hearts in a way unlikely to be undone." *Brown* v. *Board of Education*, 347 U.S. 483, 494 (1954). Nor are the benefits of this litigation limited to black children:

> All of our people, whites, Orientals, Negroes and Mexican-Americans, will benefit by integrated living and experience in integrated schools, learning that race, color, creed, economic and social circumstances or station in life do not make anyone more or less than a human being. Integrated education will tend to teach all of the students to lose their fears of different races, their prejudice, their bias, their bigotry, to seek and do Justice, to walk humbly with their fellow beings, to love mercy, to temper righteousness with mercy, and to allow to every person their right to worship as they will. The parents, in participating in integrated educational processes, will also so learn. Board will learn of the benefit to all of its students by and from inte-

grated education and will, hopefully, lose its assumptions of inferiority of one race when compared with another.

Crawford v. *Board of Education of the City of Los Angeles* (No. 822 854, Superior Court, Los Angeles County, opinion dated February 11, 1970).

Respondents in *Bradley* urge that this argument (i.e., that the litigation benefitted the class of school children involved), was not part of the case below. Brief in Opposition, p.12, n.20. On the contrary, the class benefit theory was urged by petitioners and considered by the lower courts at each stage of the proceedings below. In their memorandum in the District Court, petitioners argued they were entitled to legal fees because the litigation had benefitted the school children of Richmond.[1] The District Court expressly considered this class benefit theory, though it declined to apply it to school desegregation litigation. Petition, pp. 12a-14a. On appeal petitioners expressly criticized the Fourth Circuit's recent decision in *Brewer* v. *School Board of Norfolk, Virginia*, 456 F.2d 943 (4th Cir. 1972).[2]

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[1] "The right of counsel to reasonable compensation should not be restricted or inhibited by a doctrine which limits the compensation to causes which result in monetary recovery. The protection and preservation of the inalienable constitutional rights of citizens, the enforcement of the duties of government owed to its citizens by law, is at least as valuable (if not more so) than the recovery by litigation of money. . . . To the extent that a large proportion of the students of Richmond are afforded substantial benefits through this action, by causing the School Board to perform the duties specifically imposed upon it by law, it raises the standard of the fiduciary relationship of the Board to all of its students and so serves important considerations of public policy. . . . Cf. *Mills* v. *Electric Auto-Lite Company*." Memorandum in Support of Motion for Attorneys' Fees, p. 3.

[2] "[W]e submit that the pecuniary theory adduced in *Brewer* is too narrow, and we direct the Court's attention to the Supreme Court's language in *Mills* v. *Electric Auto-Lite Co.* . . ." Supplemental Brief for Appellees, p. 8.

The Fourth Circuit expressly relied on *Brewer* in its decision denying attorneys fees in *Bradley*. Petition, pp. 35a, 54a. Thus, the applicability of the class benefit theory to school desegregation cases was consistently raised in the lower courts.

CONCLUSION

For the foregoing reasons, the petitions for writs of certiorari should be granted, and these cases set down for argument or summarily reversed under the authority of *Hall* v. *Cole*.

Respectfully submitted,

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